

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: May 20, 2013*
Judgment Pronounced on: May 31, 2013

+ **WP(C)No.4171/2012**

H.K.BHARTI Petitioner
Represented by: Mr.Rana Parveen Siddiqui,
Advocate with Mr.Javed Ahmed
and Mr.Eram Khan, Advocates

versus

UNION OF INDIA & ORS. Respondents
Represented by: Mr.B.V.Niren, CGSC with
Mr.Prasouk Jain, Advocate for R-1
Mr.Anas Tanwir, Advocate for
Mr.Rajiv Nanda, ASC for R-2
Mr.V.K.Tandon, Advocate with
Mr.Yogesh Saini, Advocate for R-
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CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR.JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. It was alleged against the petitioner that while functioning as Sales Tax Officer in the Enforcement Branch of the Sales Tax Department, Government of NCT of Delhi on July 24, 2002, he impounded truck No.DL-1G-9270 carrying semi-refined paraffin wax. The consignee was M/s.Sunrise International Jaipur. But the driver of the truck informed him that the goods were meant to be unloaded at A-17, Jhilmil Colony, Industrial Area Delhi where a firm by the name of M/s. Tara Chand & Sons was carrying on business. He passed an order on

July 30, 2002 releasing the truck after levying tax in sum of ₹8,571/- and penalty in sum of ₹21,429/-. It was alleged in the charge memo that as per the 4th Schedule to the Delhi Sales Tax Rules, wax, except petroleum wax used for manufacturing candles, was required to be taxed at the rate of 20% of the value of the goods. The relevant provisions of the Delhi Sales Tax Act 1975 empowered him to levy penalty up to 2.5 times of the normal rate of tax. It was further alleged that since the goods were intended for sale in Delhi and not to be delivered at Jaipur as also that the same were impounded without bill/challan/goods received i.e. in the absence of documents from the owner of the goods regarding end use of wax, he ought to have taxed the goods at the rate of 20%, which amount would be ₹46,608/- and the penalty would be ₹1,16,520/- i.e. totaling ₹1,63,128/-; since tax and penalty levied was only ₹30,000/-, revenue loss amounting to ₹1,33,128/- was occasioned.

2. The stand of the petitioner was that 2.5 times of the tax was the maximum penalty which could be levied and thus a wrong discharge of his quasi judicial functions could not be made the subject matter of a domestic inquiry. As regards the tax levied, he stated that since the dealer told him that the end use of the wax was manufacturing candles, he levied the correct tax.

3. To understand the exact contours of the charge, it would be useful to note the statement of imputation of misconduct, which reads as under:-

“The Enforcement Branch of Sales Tax Department, Govt. of NCT of Delhi impounded a truck No.DL-1G-9270 on 24.7.2002 from outside the Inland Container Depot, Tughlakabad which was carrying semi-refined paraffin wax for the consignee, M/s. Sunrise International, Jaipur, without bills/challans and goods receipt. The Driver of the truck stated before the checking staff that the goods loaded in the truck were meant to be un-loaded

at the premises of M/s. Tara Chand & Sons, A-17, Jhilmil Colony, Industrial Area, Delhi. Shri H.K.Bharti, STO issued orders dated 30.7.2002 for release of the said truck imposing ₹30,000/- as tax and penalty (₹8571/- as tax and ₹21,429/- as penalty).

As per the 4th Schedule of Delhi Sales Tax Rules, was (except petroleum wax used for manufacturing candles) is required to be taxed @ 20%. In such cases, as per the provisions of Delhi Sales Tax Act, 1975 the penalty is also to be imposed @ 2.5 times of the normal rate of tax. Since the goods were intended from sale in Delhi as is proved from the fact that these were unloaded at Delhi and not for Jaipur and the same were impounded without bill/challan/G.R., tax @ 20% plus penalty @ 2.5 times of the amount of tax was to be levied before releasing the goods. In the absence of the documents or statement of the dealer with regard to the end use of wax, the same would have been taxed @ 2% and as such the tax liability and penalty would have been assessed as ₹1,63,128/- (₹46,608/- as tax and ₹1,16,520/- as penalty).

But, Shri H.K.Bharti, STO charged tax and penalty of ₹30,000/- only in this case, whereas it should have been ₹1,63,128/-. A loss of revenue amounting to ₹1,33,128/- has occurred to the government by gross negligence to Shri Bharti which is attributed to his mala fide intention.

Thus, Shri H.K.Bharti has shown negligence on his part and dereliction to duty in passing the above release order. He failed to maintain absolute integrity and thereby acted in a manner which is unbecoming of a government servant and his conduct was in violation of provisions of Rule 3 of the CCS (Conduct) Rules, 1964.”

4. Considering the evidence led at the inquiry and taking note of the defence of the petitioner, the Inquiry Officer indicted the petitioner and the reasoning of the learned Inquiry Officer reads as under:-

“a) The C.O. issued notice to the dealer proposing to impose penalty under sub section 5A of Section 64 of the Act. However, before releasing the goods on 30/07/2002, the C.O.

has calculated total amount payable by the dealer on the Order Sheet dated 30/7/2002 indicating ₹8571/- as tax and ₹21,429/- as penalty. He has blithely attempted to explain this anomaly by stating that it was just a clerical omission not in conformity with the law. This explanation is not acceptable.

b) The C.O. has himself admitted that the goods (paraffin was) were meant for the manufacture of candles and hence taxable @12% whereas in the break-up, referred to in sub-para (a) above, he has levied tax of ₹8571/- which comes to about 3.75% of the value of goods. The C.O. has also not been able to show as to how he presumed that the paraffin wax seized was meant for the manufacture of candles.

c) The C.O. in his defense has attempted to seek cover of Circular No.F.3/CST/L&J/Cir.-STAT/2002-03/1243-1392 dated 28/3/2003 the contents of which cannot be faulted, though it was issued about 8 months after the present assessment made by the C.O. in July 2002. However, in fact, the C.O. has not in the least followed the spirit of this order which, inter alia, specifies that “the Assessing Authorities are required to pass appropriate judicious orders by applying their own independent mind and wisdom in accordance with Law”. Thus, the C.O.’s claim that imposition of penalty is his discretion cannot be accepted as the various documents recorded as well as the Release Order issued by him are neither explanatory nor ‘speaking’ in their content.”

5. Supplying the report of the Inquiry Officer to the petitioner and considering his response, vide order dated September 23, 2008 penalty of reducing petitioner by one stage in the time scale of pay for a period of two years with cumulative effect was imposed against which appeal preferred to the Appellate Authority was rejected vide order dated September 21, 2010. Petitioner’s challenge before the Central Administrative Tribunal vide OA No.3738/2011 has failed when said Original Application was dismissed on March 07, 2012.

6. The fulcrum of the argument of the petitioner before the Tribunal, which was repeated before us was that in matters pertaining to quasi judicial functions, disciplinary proceedings cannot be taken for wrong decisions unless it is alleged, and the allegation is made good, that the adjudicatory order was tainted with the oblique motive to help the assessee/party.

7. We need not note the plethora of decisions which hold that pertaining to quasi-judicial adjudications, disciplinary proceedings for wrong decisions cannot be initiated unless there is a charge of mala fide or an oblique motive and the same is made good.

8. Indeed, on the point of law neither counsel was at variance.

9. In the instant case there is no charge of any oblique motive against the petitioner.

10. But, in matters pertaining to receiving illegal gratifications or showing undue favour to an assessee, it would be virtually impossible for the department to prove the same.

11. From the Statement of Imputation annexed with the charge-sheet what emerges is not that while exercising his quasi-judicial powers, the petitioner wrongly interpreted the law or misread the factual aspect of the matter. The charge is of not considering the fact that wax, except petroleum wax, end product whereof would be candles, was exigible to tax @ 20%. The charge was that the driver of the truck which was impounded and which was carrying the goods was not having the relevant documents to show the destination of the goods but had informed petitioner that the goods were to be delivered to M/s.Tara Chand & Sons. The owner of the goods was Sunrise International Jaipur. It was thus a case of an Intra-State sale. Without obtaining proof that the wax was ultimately to be used for manufacturing candles, the petitioner passed an

order, result whereof was loss of revenue to the Government. As we read the evidence in light of the charge and the Statement of Imputation, we concur with the view taken by the Tribunal that it is a case of gross negligence. We highlight. It is not a case where the stand of the department is that after considering the relevant material a wrong assessment was made.

12. We repeatedly asked learned counsel for the petitioner during arguments as to on what basis petitioner assumed that the wax was intended to be used to manufacture candles. Learned counsel frankly conceded that the petitioner acted on the basis of the information supplied to him by the owner of the goods. Though the counsel did not expressly concede, but tacitly admitted that the petitioner gullibly accepted what fell from the mouth of the owner of the goods.

13. That apart, a writ court would be concern with a decision making process and not the merits of a decision.

14. The writ petition is accordingly dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

MAY 31, 2013
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